

1 IN THE HOUSE

BY RULES COMMITTEE
BY REQUEST OF THE GOVERNOR

2 HOUSE BILL NO. 23

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SECOND LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act to curb monopolies and outlaw
7 restraints of trade; and providing for
8 an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 ARTICLE I

11 SUBSTANTIVE OFFENSES

12 Section 1. RESTRAINT OF TRADE. Every contract, combination,
13 or conspiracy in unreasonable restraint of trade is unlawful.

14 Sec. 2. MONOPOLIZATION. It is unlawful to monopolize,
15 attempt to monopolize, or conspire to monopolize trade.

16 Sec. 3. EXCLUSIVE DEALING. Any contract, agreement, or
17 understanding for exclusive dealing is unlawful if the effect may
18 be to lessen competition substantially in any line of trade.

19 Sec. 4. DISCRIMINATION IN PRICE, SERVICES, OR FACILITIES:
20 SELECTION OF CUSTOMERS. a. It is unlawful for any person en-
21 gaged in trade or commerce, in the course of such trade or com-
22 merce, either directly or indirectly, to discriminate in price
23 between different purchasers or sellers of commodities of like
24 grade and quality, or to refuse to deal with any purchaser or
25 seller, where either or any of the purchases or sales involved in
26 such discrimination are in trade or commerce, and where the effect
27 of such discrimination may be substantially to lessen competition
28 or tend to create a monopoly in any line of commerce, or to in-
29 jure, destroy, or prevent competition with any person who either

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1 grants or knowingly receives the benefit of such discrimination,
2 or with customers of either of them: provided, that nothing con-
3 tained in this section or Sec. 3 of this Act shall prevent dif-
4 ferentials which make only due allowance for differences in the
5 cost of manufacture, sale, or delivery resulting from the differ-
6 ing methods or quantities in which such commodities are from such
7 sellers bought or picked up or to such purchasers sold or de-
8 livered: provided, however, that nothing contained in this section
9 or Sec. 3 of this Act shall prevent persons engaged in selling or
10 buying commodities from selecting their own customers in bona fide
11 transactions and not in restraint of trade: and provided further,
12 that nothing contained in this section or Sec. 3 of this Act shall
13 prevent price changes from time to time where in response to
14 changing conditions affecting the market for or the marketability
15 of the commodities concerned, such as but not limited to actual
16 or imminent deterioration of perishable commodities, obsolescence
17 of seasonal commodities, distress sales under court process, or
18 sales in good faith in discontinuance of business in the goods
19 concerned.

20 b. Upon proof being made, in any judicial proceeding on a
21 complaint under this section, that there has been discrimination
22 in price or services or facilities furnished, the burden of re-
23 butting the prima facie case thus made by showing justification
24 shall be upon the person charged with a violation of this section,
25 and unless justification shall be affirmatively shown, the Su-
26 perior Court shall issue an order terminating the discrimination:
27 provided, however, that nothing contained in this section shall
28 prevent a seller rebutting the prima facie case thus made by show-
29 ing that his lower price or the furnishing of services or

1 facilities to any purchaser or purchasers was made in good faith
2 to meet an equally low price of a competitor or the services or
3 facilities furnished by a competitor; or a buyer rebutting the
4 prima facie case thus made by showing that his higher price of the
5 furnishing of services or facilities to any seller or sellers was
6 made in good faith to meet an equally high price of a competing
7 buyer or the services or facilities furnished by a competing buyer.

8 c. It is unlawful for any person engaged in trade or commerce
9 in the course of such trade or commerce, to pay or grant, or to
10 receive or accept, anything of value as a commission, brokerage,
11 or other compensation, or any allowance or discount in lieu there-
12 of, except for services rendered in connection with the sale or
13 purchase of commodities either to the other party to such transac-
14 tion or to an agent, representative, or other intermediary therein
15 where such intermediary is acting in fact for or in behalf, or is
16 subject to the direct or indirect control, of any party to such
17 transaction other than the person by whom such compensation is so
18 granted or paid.

19 d. It is unlawful for any person engaged in trade or com-
20 merce to pay or contract for the payment of anything of value to
21 or for the benefit of a customer of such person in the course of
22 such commerce as compensation or in consideration for any services
23 or facilities furnished by or through such customer in connection
24 with the processing, handling, sale, or offering for sale of any
25 commodities manufactured, sold, or offered for sale by such per-
26 son, unless such payment or consideration is available on propor-
27 tionally equal terms to all other customers competing in the
28 distribution of such commodities.

29 e. It is unlawful for any person engaged in trade or commerce

1 to discriminate or to assist in a discrimination to his knowledge
2 in favor of one purchaser against another purchaser or purchasers
3 of a commodity in trade or commerce, with or without processing,
4 by contracting to furnish or furnishing, or by contributing to the
5 furnishing of, any services or facilities connected with the pro-
6 cessing, handling, sale, or offering for sale of such commodity
7 so purchased upon terms not accorded to all purchasers on propor-
8 tionally equal terms.

9 f. It is unlawful for any person engaged in trade or com-
10 merce, in the course of such trade or commerce, knowingly to induce
11 or receive a discrimination in price which is prohibited by this
12 section.

13 Sec. 5. ACQUISITIONS. It is unlawful for any person not a
14 natural person to acquire stock or assets from any person if the
15 effect may be to lessen competition substantially in any line of
16 trade or tend to create a monopoly.

17 Sec. 6. DEFINITIONS. a. "Person" as used in this Act shall
18 include natural persons, corporations, trusts, unincorporated
19 associations and partnerships.

20 b. "Trade" shall include the sale of assets or services, and
21 any commerce directly or indirectly affecting the people of the
22 State of Alaska.

23 c. "Assets" shall include any property, tangible or intangi-
24 ble, real, personal, or mixed, and wherever situate, and any other
25 thing of value.

26 ARTICLE II

27 ENFORCEMENT AND PROCEDURE

28 Sec. 7. CRIMINAL PENALTIES. Any person who violates Secs.
29 1, 2, 3, or 4 of this Act is guilty of a misdemeanor and may be

1 punished by fine not to exceed \$50,000, or imprisonment not to
2 exceed one year, or both. Whenever a corporation violates Secs.
3 1, 2, 3, or 4 of this Act, the individual directors, officers, or
4 agents of said corporation who have authorized or ordered the acts
5 constituting such violation, shall be punishable in accordance
6 with this section. Exclusive jurisdiction to enforce this section
7 is vested in the superior courts. No action under this section
8 shall be brought more than four years after the commission of the
9 acts constituting in whole or in part the offense charged.

10 Sec. 8. EQUITABLE RELIEF AND CHARTER FORFEITURE. The superi-
11 or courts of this state are granted exclusive jurisdiction to pre-
12 vent and restrain violations of Secs. 1 through 5 of this Act and,
13 in order to effectuate the purposes of this Act, they may, in
14 appropriate cases, suspend or revoke the corporate charter or the
15 right to do business in this state of any violator. When the
16 party complained of shall have been duly notified that an action
17 has been filed against him, the court shall proceed, as soon as
18 possible, to the hearing and determination of the case; and pend-
19 ing trial the court may at any time make temporary restraining
20 orders or prohibitions as shall be deemed just in the premises.

21 Sec. 9. ENFORCEMENT. Exclusive power to enforce Secs. 7 and
22 8 of this Act is vested in the Attorney General or such persons as
23 he may designate.

24 Sec. 10. CIVIL INVESTIGATIVE DEMAND. a. Whenever the
25 Attorney General believes that any person may be in possession,
26 custody, or control of any original or copy of any book, record,
27 report, memorandum, paper communication, tabulation, map, chart,
28 photograph, mechanical transcription, or other tangible document
29 or recording, wherever situate, which he believes to be relevant

1 to the subject matter of an investigation of a possible anti-trust
2 violation, he may, prior or subsequent to the institution of a
3 civil proceeding thereon, execute in writing, and cause to be
4 served upon such a person, a civil investigative demand requiring
5 such person to produce such documentary material and permit in-
6 spection and copying.

7 b. Each such demand shall --

8 (1) State the statute and section or sections thereof
9 alleged violation of which is under investigation, and the general
10 subject matter of the investigations;

11 (2) Describe the class or classes of documentary
12 material to be produced thereunder with reasonable specificity
13 so as to fairly indicate the material demanded;

14 (3) Prescribe a return date within which the documen-
15 tary material is to be produced; and

16 (4) Identify the state employees to whom such documen-
17 tary material is to be made available for inspection and copying.

18 c. No such demand shall require the production of any
19 documentary material which would be privileged from disclosure
20 if demanded by a subpoena duces tecum issued by a court of this
21 state in aid of a grand jury investigation of such alleged viola-
22 tion.

23 d. Any such demand may be served by any attorney employed
24 by this state. Service of any such demand may be made by --

25 (1) Delivering a duly executed copy thereof to the
26 person to be served, or, if such person is not a natural person,
27 to any officer of the person to be served; or

28 (2) Delivering a duly executed copy thereof to any
29 place of business in this state of the person to be served; or

1 (3) Mailing by registered or certified mail a duly
2 executed copy thereof addressed to the person to be served at any
3 place of business in this state, or, if said person has no place
4 of business in this state, to his principal office or place of
5 business.

6 e. Documentary material demanded pursuant to the provisions
7 of this section shall be produced for inspection and copying
8 during normal business hours at the principal office or place of
9 business of the person served, or at such other times and places
10 as may be agreed upon by the person served and any authorized
11 employee of the state.

12 f. No documentary material produced pursuant to a demand, or
13 copies thereof, shall, unless otherwise ordered by a superior
14 court for good cause shown, be produced for inspection or copying
15 by, nor shall the contents thereof be disclosed to, other than an
16 authorized employee of the state, without the consent of the
17 organization who produced such material: Provided, That, under
18 such reasonable terms and conditions as the Attorney General shall
19 prescribe, the copies of such documentary material shall be avail-
20 able for inspection and copying by the person who produced such
21 material or any duly authorized representative of such person.
22 The Attorney General or any authorized employee of the state may
23 use such copies of documentary material as he determines necessary
24 in the performance of his official duties in connection with this
25 Act, including presentation of any case or proceeding before any
26 court or grand jury.

27 g. When documentary material produced pursuant to a demand
28 is no longer required for use in connection with the investigation
29 for which it was demanded, or in any case or proceeding resulting

1 therefrom, or at the end of 18 months following the date when
2 such material was produced, whichever is the sooner, such organi-
3 zation shall be relieved of the duty to hold such documentary
4 material available for inspection and copying as required by
5 Subsec. a.: Provided, however, that any court in which a petition
6 may be filed as set forth in Subsec. h. hereof may, upon good
7 cause shown, extend said period of 18 months, but no one of such
8 extensions may exceed 18 months in duration.

9 h. At any time before the return date specified in the
10 demand, or within 20 days after the demand has been served, which-
11 ever period is shorter, a petition to extend the return date for,
12 or to modify or set aside a demand issued pursuant to Subsec. a.,
13 stating good cause, may be filed in the Superior Court. A peti-
14 tion, stating good cause, to require the Attorney General or any
15 person to perform any duty imposed by the provisions of this Act,
16 and all other petitions in connection with a demand, may be filed
17 in the Superior Court.

18 i. A person upon whom a demand is served pursuant to the
19 provisions of this section shall comply with the terms thereof
20 unless otherwise provided by an order of court issued under Subsec.
21 h. thereof. Any person who, with intent to avoid, evade, prevent,
22 or obstruct compliance, in whole or in part, with any civil in-
23 vestigative demand under this section, removes from any place,
24 conceals, withholds, or destroys, mutilates, alters, or by any
25 other means falsifies any documentary material in the possession,
26 custody, or control of any person which is the subject of any
27 demand duly served upon any person shall be guilty of an offense
28 against the state, and shall be subject, upon conviction in any
29 court of competent jurisdiction, to a fine not to exceed \$5,000,

1 or to imprisonment for a term of not more than five years, or both.
2 j. Nothing contained in this section shall impair the
3 authority of the Attorney General or any authorized state attorney
4 to (1) lay before any grand jury impanelled before any superior
5 court of this state any evidence concerning any alleged anti-trust
6 violation, (2) invoke the power of any such court to compel the
7 production of any evidence before any such grand jury, (3) file a
8 civil complaint or criminal information alleging an anti-trust
9 violation which is not described in the demand, or (4) institute
10 any proceeding for the enforcement of any order or process issued
11 in execution of such power, or for the punishment of any organiza-
12 tion or individual for disobedience of any such order or process.

13 ARTICLE III

14 PRIVATE ACTIONS

15 Sec. 11. PRIVATE REMEDIES. Any person injured in his busi-
16 ness or property by a violation of Secs. 1, 2, 3, 4, or 5 of this
17 Act, or because he refuses to accede to a proposal for an arrange-
18 ment which, if consummated, would be in violation of Secs. 1, 2,
19 3, 4, or 5 of this Act, may bring a civil action in the superior
20 court, to enjoin further violations, to recover treble damages for
21 his injuries, and to recover cost of the suit including a reason-
22 able fee for the services of his attorney. In computing damages
23 under this section the court may consider reasonable expectation
24 interests. For the purposes of this section, "person injured"
25 shall include the State of Alaska, its agencies and political
26 subdivisions.

27 Sec. 12. LIMITATION OF PRIVATE DAMAGES ACTIONS. Any action
28 to enforce a claim for treble damages under Sec. 11 shall be for-
29 ever barred unless commenced within four years after the cause of

1 action accrues: Provided, Whenever any action under Secs. 7 or 8
2 of this Act is brought, the running of the foregoing statute of
3 limitations, with respect to every private right of action for
4 damages under Sec. 11 which is based in whole or in part on any
5 matter complained of in the action brought under Secs. 7 or 8,
6 shall be suspended during the pendency thereof.

7 Sec. 13. EVIDENTIARY EFFECT OF JUDGMENT IN FAVOR OF STATE.
8 The final judgment or decree rendered in any action brought by
9 the State of Alaska under Secs. 6 or 7, to the effect that defend-
10 ant has violated Secs. 1, 2, 3, 4, or 5 shall be prima facie
11 evidence against such defendant under Sec. 11 of this Act, as to
12 all matters respecting which the judgment or decree would be an
13 estoppel as between the parties thereto. Provided, That this
14 section shall not apply to consent judgments or decrees, or nolo
15 judgments, where the court makes no finding of illegality. This
16 section shall in no way impair any collateral estoppel to which
17 the state is entitled.

18 Sec. 14. PERSONAL SERVICE OUT OF STATE. Personal service of
19 any process in an action under Secs. 7 or 10 may be made upon any
20 person outside the state, (1) if such person has done an act in
21 violation of Secs. 1, 2, 3, 4, or 5 of this Act which has had the
22 impact in this state which such sections reprehend, or (2) if the
23 presence of such person before the court is necessary to the secur-
24 ing of adequate relief. Persons in category (1), shall be deemed
25 to have thereby submitted themselves to the jurisdiction of the
26 courts of this state.

27 Sec. 15. SEVERABILITY. If any section, subsection, or
28 provision of this Act shall be held invalid by any court for any
29 reason, such invalidity shall not in any way affect the validity

1 of the remainder of this Act.

2 Sec. 16. SHORT TITLE. This Act may be known and cited as
3 the "Alaska Anti-trust Act."

4 Sec. 17. EFFECTIVE DATE. This Act takes effect on the day
5 after its passage and approval or on the day it becomes law with-
6 out such approval.

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